

A **SIVASUBRAMANIAM SIVAYOGARAJASINGAM & ANOR**
v. SAUMIAN SIVAYOGARAJASINGAM & ORS

HIGH COURT MALAYA, SHAH ALAM
TEE GEOK HOCK J

[CIVIL SUIT NO: BA-22NCC-98-07-2022]

B 15 JUNE 2023

C **Abstract** – *There is no express statutory provision which forbids the transfer of a civil suit from one division of the High Court to another division of the High Court of the same branch. Hence, an application for transfer in such a situation would be allowed if it could be shown that the civil suit sought to be transferred could be heard more justly and conveniently in the other High Court division the civil suit sought to be transferred to.*

D **CIVIL PROCEDURE:** *Transfer of action – Application to transfer civil suit from one division of High Court to another division of High Court of same branch – Whether transfer of civil suit only allowed between different branches of High Court within same territorial jurisdiction – Whether consolidation order compulsory before application for transfer could be allowed – Whether consolidation order contravenes concept of coordinate jurisdiction – Whether just and convenient for civil suit to be transferred – Rules of Court 2012, O. 57 r. 1(1) & (4)*

F There were four civil suits filed at the different divisions of the Shah Alam High Court pertaining to a dispute of, among others, assets and shareholdings of several family companies involving the first plaintiff and the first defendant, who were father and son. Instead of being heard together, the four civil suits were arranged to be heard in the following manner: (i) Civil Suit No. BA-22NCC-98-07-2022 ('Suit 98') to be heard by the NCVC 10 court; (ii) Civil Suit No. BA-22NCC-114-08-2022 ('Suit 114') to be heard by the NCVC 12 court; and (iii) Civil Suit Nos. BA-24NCC-109-10-2022 ('Suit 109') and BA-22NCC-131-10-2022 ('Suit 131') to be heard by the NCVC 3 court. Thus, in addition to the first plaintiff's application at another court to transfer Suit 114 from the NCVC 12 court to the NCVC 3 court, the first plaintiff also filed the present application at this court to transfer Suit 98 from the NCVC 10 court to the NCVC 3 court ('present application'), so that all the four civil suits could be heard together and decided by the same judge. The application was however objected to by the first defendant. In his objections, the first defendant, among others, contended that: (i) the court as a High Court had no power to transfer a suit from its division to another of its division within the same branch or locality, *ie*, from the NCVC 10 court to the NCVC 3 court; (ii) since the present application was filed before an order of consolidation of cases was made by the court, the present application

was filed prematurely; and (iii) there was no common issue between Suit 98 and Suits 109 and 131. Even if there was a common issue, the present application was not a proper case for a transfer of case to be allowed.

Held (allowing application):

- (1) There is no statutory provision to limit the judge-to-judge transfer of cases to only situations of branch-to-branch, division-to-division or locality-to-locality transfer. The statutory provisions in O. 57 r. 1(2) of the Rules of Court 2012 ('ROC') provides for the judge-to-judge transfer in the High Court, and one cannot add word thereto to limit its scope, nor introduce extraneous criterion of branch-to-branch, division-to-division or locality-to-locality transfer. This is particularly the legal position as the word 'branch', 'division' or 'locality' does not appear anywhere in the Courts of Judicature Act 1964 and the ROC. The sum total of case transfer powers of a High Court Judge ('HCJ') therefore was that the same had the statutory power to transfer a case before him/her to another HCJ, irrespective of whether the other HCJ was located at the same or different branch, division or locality, as long as the other branch, division or locality where the transferee-judge sat was within the same territorial jurisdiction as that of the transferor-judge. Hence, in the premises, it was well within the power of this court to transfer Suit 98 from the NCVC 10 court to the NCVC 3 court. (paras 35 & 37)
- (2) One of the characteristics of coordinate jurisdiction was that a judge could not order or direct another judge with coordinate jurisdiction what to do or how to conduct a case which was before the other judge. A judge's order of consolidation of one case before him/her with another case before another judge of coordinate jurisdiction would be tantamount to the first-mentioned judge ordering or directing the second-mentioned judge on the manner of conducting the trial of a case before the second-mentioned judge, which would offend the concept of coordinate jurisdiction. Therefore, in law and in practice, the courts do not and should not make such an order of consolidation. Although a judge may, pursuant to express statutory provision, order the transfer of a case to another judge of coordinate jurisdiction, the transferor-judge could not order a consolidation of cases which would include a case pending before the transferee-judge. Whether or not the transferred case should be consolidated or heard together or separately, it must be left to the transferee-judge to consider and decide. As such, the first defendant's argument that an order of consolidation must be made before there could be transfer of case from one judge to another judge was rejected. (paras 41-43)

- A (3) It would be just and convenient, within the meaning of O. 57 r. 1(1) and
(4) of the ROC, for the four civil suits to be heard by the same HCJ, as
it could avoid conflicting findings of facts and/or decisions between
these interrelated suits. Taking into consideration also that (i) there were
already two of the four civil suits pending before the NCVC 3 court; and
B (ii) there would be a delay in the trial of Suit 98 if the present application
was not allowed as in the NCVC 10 court, there were no full trial dates
available for Suit 98 until the middle of the year 2024, the present
application was allowed. (paras 64-66)

Case(s) referred to:

- C *Asia Debut Sdn Bhd v. Kementerian Pendidikan Malaysia & Ors* [2014] 1 LNS 1339 HC
(*refd*)
Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor [2016]
4 CLJ 641 FC (*refd*)
Harris v. DPP [1952] 1 All ER 1050 (*refd*)
Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd [2019] 6 CLJ 292 CA (*refd*)
D *Kerajaan Negeri Kelantan v. Petroliaam Nasional Bhd & Anor* [2011] 6 CLJ 649 CA (*refd*)
Koh Heng Jin Holdings Sdn Bhd & Anor v. Lee Quan Yoong & Anor [2022] 1 LNS 504
HC (*refd*)
Liziz Plantation v. Liew Ah Yong [2020] 10 CLJ 94 HC (*refd*)
MTD Captial Bhd v. Tan Sri Dr Azmil Khalili Dato' Khalid [2020] 2 CLJ 677 HC
(*refd*)
E *Mutual Life & Citizens' Assurance Company Ltd & Another v. Clive Raleigh Evatt* [1971]
AC 793 (*refd*)
R Ramani M Ramalingam & Ors v. Deluxe Exclusive Lounge Sdn Bhd & Another Case
[2018] 5 CLJ 236 HC (*refd*)
Quinn v. Leatham [1901] AC 506 (*refd*)
F **Legislation referred to:**
Contracts Act 1950, s. 30
Courts of Judicature Act 1964, ss. 3, 25(1), Schedule item 12
Federal Constitution, arts. 121(1), 122AA(1)
Interpretation Acts 1948 and 1967, s. 17A
G Rules of Court 2012, O. 1 r. 4(2), O. 47 r. 1(4), O. 57 r. 1(1), (2), (3), (4)(A), (B),
(C)
Subordinate Courts Act 1948, ss. 59, 76, Third Schedule items 3(2), 27
For the plaintiffs - Watson Peters Paul Joseph Peters; M/s Peters Chambers
For the defendants - Liew Yik Kai; M/s Azman Davidson & Co
H *Reported by Syamim Ariffin*

JUDGMENT

Tee Geok Hock J:

Introduction

- I [1] Enclosure 58 is an application by the plaintiff to transfer the present
NCVC 10 suit here to Shah Alam High Court NCVC 3 so that it can be heard
and decided by the same judge as two other pending suits in NCVC 3.

[2] Apart from the two other suits pending in NCVC 3 and this NCVC 10 suit, there is also another pending suit in NCVC 12 which the plaintiff has applied for transfer to NCVC 3 for all of the four suits to be heard and decided by the same judge. A

[3] The plaintiff here is the father of the first defendant here, and the subject matter in dispute here relate to assets and shareholdings of one of the several companies which the plaintiff claims to be family companies and/or interrelated companies. B

[4] On 27 April 2023, this court allowed the plaintiff's application for transfer to NCVC 3 so that this NCVC 10 suit can be heard and decided by the same judge as in the other two pending NCVC 3 suits. C

[5] Dissatisfied, the defendant has appealed to the Court of Appeal.

Factual Background

[6] The plaintiff's version of cases is that allegedly "this suit, as the other three civil actions at the Shah Alam High Court, is a consequence of an ungrateful avaricious and dishonest son trying to deprive his now wheel-chaired father, of the control of family owned companies and assets therein where the capital for all the companies was the result of earnings by the plaintiff/father". D

[7] The plaintiff's version has been denied by the first defendant. According to the first defendant, the plaintiff's affidavit contains scandalous and irrelevant allegations, the court has no power to transfer a suit from one NCVC court in Shah Alam to another NCVC court in Shah Alam, there is no common issue between this NCVC 10 suit and the two NCVC 3 suits, and even if there is common issue, it is still not proper for transfer of case here. E

[8] The question whether or not the plaintiff's version is to be accepted by the court, is an issue to be tried at the full trial and not at this stage. At this stage, this court's concern is whether there are common issues or questions of fact between this NCVC 10 suit and the other two pending NCVC 3 suits so as to render it appropriate for them to be heard by the same judge. For the purpose of determining whether or not there is common issue or questions of fact, this court will rely on the pleadings in the relevant suits as exhibited to the affidavits filed in respect of this encl. 58 application. F

First Issue: Whether The Court Has Power To Transfer A Suit From One NCVC Court In Shah Alam To Another NCVC Court In Shah Alam G

[9] The defendants argue that (a) "the power of this High Court to transfer proceedings is conferred by the Courts of Judicature Act 1964, s. 25(2) read together with Item 12 of the Schedule"; (b) "O. 57 r. 1 of the Rules of Court 2012 prescribes that a High Court may transfer a case before it to another High Court of co-ordinate jurisdiction." I

- A [10] Relying on the High Court's decision in *Koh Heng Jin Holdings Sdn Bhd & Anor v. Lee Quan Yoong & Anor* [2022] 1 LNS 504, which in turn relied on the Court of Appeal's decision in *Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Anor* [2011] 6 CLJ 649, the defendants argue that the High Court has no power to transfer a case from one division of the High Court to another division of the High Court in the same branch or locality. The defendants also cited the Court of Appeal's decision in *Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd* [2019] 6 CLJ 292 to support its argument.

- B [11] As this court is bound by the *ratio decidendi* of a relevant decision of the Court of Appeal on the same question of law but is not bound by another decision of the High Court, this court will now examine and analyse the reported judgments of the Court of Appeal in *Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Anor* [2011] 6 CLJ 649 and *Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd* [2019] 6 CLJ 292 in order to ascertain whether or not the Court of Appeal has decided to the effect that the High Court has no power to transfer a case from one division of the High Court to another division of the High Court in the same branch or locality. This examination and analysis are necessary because this question of law affects numerous court cases and the decade-long practice of the courts.

- C [12] The following decisions of appellate courts have laid down the rule that the words and expressions used in the court judgment must be read in the context of the factual matrix of the case:

- D (i) "every judgment of the court must be read as governed by the facts of the case": *Quinn v. Leatham* [1901] AC at p. 506;
- E (ii) every case is decided on its own facts and must be read accordingly: per Viscount Simon in *Harris v. DPP* [1952] 1 All ER at p. 1050D;
- F (iii) "all judgment under the common law system must be understood *secundum subjectum materiam*" ie, judges, in pronouncing principles, have in mind the characteristics present in the case, which characteristics may be absent in other cases": per Lord Diplock in *Mutual Life & Citizens' Assurance Company Ltd & Another v. Clive Raleigh Evatt* [1971] AC 793, at p. 802DF.4 In *Quinn v. Leatham*, Earl of Halsbury LC stated as follows:

- G Now, before discussing the case of *Allen v. Flood* [1898] AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides.

[13] Firstly, we look at the Court of Appeal's decision in *Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd* [2019] 6 CLJ 292. The said case involved an appeal against the High Court's refusal to consolidate two suits filed in different divisions of the Kuala Lumpur High Court. The Court of Appeal allowed the appeal and ordered the consolidation of the two suits in filed in different divisions of the Kuala Lumpur High Court. The *ratio decidendi* of the said case has been correctly summarised in headnotes as follows:

(1) Given the clear commonality of the issues and facts in the two suits, the main purpose of consolidation as stated by the Federal Court in the case of *Central Securities (Holdings) Bhd v. Haron Mohamed Zaid* ('*Central Securities*') and raised by the appellant had clearly been achieved. It was held in the said case that the main purpose of consolidation is to save costs and time, and therefore it will not usually be ordered unless there is some 'common question of law or fact bearing sufficient importance in proportion to the rest.' The failure to file the counterclaim, given the clear satisfaction of the principle for consolidation as provided in O. 4 of the Rules of Court 2012 ('ROC') as well as the extremely important consideration of whether there would be inconsistent judgments pronounced by two courts, was clearly overshadowed by these legal considerations. That failure was rendered even more insignificant by the use of the word 'may' in O. 15 of the ROC which governs the filing of a counterclaim. Thus, a defendant could not be forced to bring a counterclaim when sued, for the law gives him an election. (paras 8-10)

(2) Both cases were filed at the High Court of Kuala Lumpur but in different divisions, which could not stand in the way of the allimportant consideration as stated in *Central Securities* for these different divisions were created to streamline the courts for a more expeditious and efficient disposal of cases and not to create an obstacle or a hindrance against genuinely deserving cases filed in different divisions. It would be unjust to both parties to allow their respective claims to go before two different judges whose decisions may conflict with each other, and this probable outcome must be avoided at all costs. (paras 11 & 13)

[14] From the reported judgment in *Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd* [2019] 6 CLJ 292, the defendants quoted one sentence from para. [11] of the judgment (shown with underlining below) and argued that it supported their contention of absence of such transfer power. Paragraph [11] of the judgment in *Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd* [2019] 6 CLJ 292 reads as follows:

[11] As for the argument that only cases before the same High Court can be transferred, with respect we were unable to accede to the same. Order 57 of the Rules of Court 2012 on transfer of proceedings does not come into play in the factual matrix of this case although it cannot be denied that the natural consequence of the consolidation order when allowed would result in one case being transferred to the other court and heard

- A by the same judge. **Order 57 r. 1(1) caters specifically for cases where, for instance, a case in the Kuala Lumpur High Court would be more expediently heard in the High Court in Shah Alam.** In this appeal, both cases were filed in the High Court of Kuala Lumpur but in different divisions, cannot stand in the way of the all important consideration as stated in Central Securities for these different divisions were created to
- B streamline the courts for a more expeditious and efficient disposal of cases but not to create an obstacle or a hindrance against genuinely deserving cases filed in different divisions. In saying this, we were aware that Dato' Seri Timor Shah Rafiq and Nautical did apply to transfer Suit 165 to the Civil Division but this was dismissed by Mohammed Zaini Mazlan J on
- C 20 March 2018 after Nordin Hassan J's refusal to consolidate the two cases. The importance of Practice Directions as held by the Federal Court and submitted by Jaya Sudhir's counsels in *Megat Najmuddin Dato Seri (Dr) Megat Khas v. Bank Bumiputra (Malaysia) Bhd* [2002] 1 CLJ 645; [2002] 1 MLJ 385 are purely administrative in nature and cannot in itself override statutory rules of procedure for the court. (emphasis added)
- D [15] Read in the context and in light of the factual matrix of the case of *Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd* [2019] 6 CLJ 292, this court does not agree with the defendants' argument that the High Court has no power to transfer a case from one division of the High Court to another division of the High Court in the same branch or locality. When the Court of Appeal
- E said "Order 57 r. 1(1) caters specifically for cases where, for instance, a case in the Kuala Lumpur High Court would be more expediently heard in the High Court in Shah Alam", the Court of Appeal was merely giving an example or an instance of a type of cases which can be transferred laterally in the High Court as between two Judges of High Court. Similar to a statutory
- F section which has an illustration of a factual scenario to explain or clarify the meaning or application of the substantive section, an illustration is merely an example and does not limit the scope of applicability of the substantive section to the illustrated factual scenario. A simple example will clarify this point. Section 30 of the Contracts Act 1950 provides that "agreements, the meaning of which is not certain, or capable of being made certain, are void"
- G and at the bottom of the substantive section are listed 5 illustrations, being (a) and (b) on sale and purchase agreement for tons of oil; (c) sale and purchase of coconut oil; (d) on sale and purchase of grains in a granary; and (e) sale and purchase of rice. Any argument or proposition that s. 30 only apply to agreements on sale and purchase of oil, coconut oil, rice and grain
- H would be clearly erroneous and unsustainable. Likewise, by giving a factual scenario as an example of permissible transfer of case, by no means did the Court of Appeal in *Jaya Sudhir Jayaram* case held or implied that transfer of case in the High Court can only be from one branch or locality of the High Court to another branch or locality of the High Court.
- I

[16] Secondly, we look at the Court of Appeal case of *Kerajaan Negeri Kelantan v. Petroliaam Nasional Bhd & Anor* [2011] 6 CLJ 649. In the case of *Kerajaan Negeri Kelantan v. Petroliaam Nasional Bhd & Anor*, during case management before the registrar, the plaintiff and Petronas ('the defendant') were notified that the managing judge had, pursuant to Practice Direction No. 1 of 2008 ('the PD'), transferred the action from the Commercial Division to the Civil Division of the same court. Subsequently, the plaintiff filed the re-transfer application, which was dismissed by the learned judge of the Civil Division. On appeal, the plaintiff's counsel, Tommy Thomas (assisted by Ms Nur Ashikin bt Abdul Rahim) relied on Item 12 of the Schedule to the Courts of Judicature Act 1964 to attribute an error to the learned judge of the High Court in dismissing the retransfer application when: (1) none of the parties in the High Court action had ever applied for its transfer from the commercial division to the civil division, and the transfer by the managing judge was not made judicially by way of normal hearing of arguments; and (2) although Petronas has not filed any affidavit in reply to the plaintiff's re-transfer application, the learned judge still proceeded to dismiss it: see para. [9] of the reported judgment. The Court of Appeal identified the question for decision as follows: Upon a true construction of Item 12 of the Schedule to the Courts of Judicature Act 1964 ("Item 12"), and in view of Practice Direction No. 1 of 2008 ("the PD"), was the learned judge of the High Court correct in dismissing the plaintiff's re-transfer application? The plaintiff's appeal was dismissed by the Court of Appeal. In effect, the Court of Appeal affirmed the validity of the managing judge's previous transfer of the action from the Commercial Division to the Civil Division of the High Court in the same branch or locality.

[17] In our present case the defendants quoted para. [14] of the Court of Appeal's reported judgment in *Kerajaan Negeri Kelantan v. Petroliaam Nasional Bhd & Anor* in support of its argument here. The said para. [11] of the said judgment is reproduced below:

[14] It is abundantly clear to us that Item 12 is inapplicable where, eg, as in the instant appeal, there was no transfer of proceedings from one High Court to another High Court as defined in s. 3 above. If at all there was any "transfer" of proceedings, at most, it was a transfer of the plaintiff's action from one division *ie*, the commercial division to another division, the civil division. As a matter of fact, the movement of the plaintiff's action was effected by the managing judge pursuant to the PD, merely from the commercial division to the civil division, while the court remained unchanged *ie*, the High Court in Malaya at Kuala Lumpur. That being the case, the plaintiff's contention based on item 12 cannot be sustained.

- A [18] Read in the context and in light of the factual matrix of the case of *Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Anor*, this court does not agree with the defendants' argument that the High Court has no power to transfer a case from one division of the High Court to another division of the High Court in the same branch or locality. The defendants' argument here
- B is directly contradictory to the said Court of Appeal's decision which has affirmed the validity of the managing judge's previous transfer of the action from the Commercial Division to the Civil Division of the High Court in the same branch or locality.
- C [19] As there appears to be some confusion and misunderstanding among legal practitioners on the question of transfer of civil cases for quite a long period of time, it is perhaps pertinent for this court to examine the concept and jurisprudential principles behind the courts' powers to transfer civil cases.
- D [20] The fundamental underlying principle of common law on juridical jurisdiction is that a court in one sovereign country does not have the power to transfer a court case before it to a court of another sovereign country. This principle applies similarly to courts of coordinate jurisdiction but with different and separate territorial jurisdictions. With this statement of principle, the law is so clear and settled that no legal practitioner would
- E contest or argue against it.
- F [21] When Malaysia was formed in 1963 with the joining of Sabah and Sarawak in the Federation of Malaysia, the Federal Constitution was enacted with several express articles which reserve some powers of Sabah and Sarawak for certain specific topics including a separate High Court of Sabah and Sarawak with its own Chief Judge (arts. 121(1) and 122AA(1)) to co-exist as court of coordinate jurisdiction with the High Court of Malaya (comprising of the other 11 States in West Malaysia) with another Chief Judge.
- G [22] According to *Black's Law Dictionary*, "coordinate jurisdiction" means 'that which is possessed by courts of equal rank, degree, or authority, equally competent to deal with the matter in question, whether belonging to the same system or different systems; concurrent jurisdiction'. Neither of the two High Courts is superior to or subordinate to the other High Court of coordinate jurisdiction. However, although most of the powers of the two High Courts
- H of coordinate jurisdiction are identical or equivalent, it does not mean both the High Courts have exactly the same powers under the laws, as each High Court has powers over its own territorial jurisdiction and Sabah and Sarawak has some different statutes there which confer different powers upon the High Court of Sabah and Sarawak.
- I

[23] With the setting up of two High Courts with their separate and different territorial jurisdictions but with coordinate jurisdiction, in the absence of valid and enforceable express statutory provisions to the contrary the High Court of Malaya would have no power to transfer its civil case to the High Court of Sabah and Sarawak, and *vice versa*, as a result of the operation of the erstwhile common law principle that a court within a territorial jurisdiction has no power to transfer its case to another court outside its own territorial jurisdiction. In Malaysia, insofar as the High Courts are concerned, it was previously thought that this common law principle against cross-territory transfer of cases has been superseded and nullified by express statutory provision in Item 12 of the Schedule to the Courts of Judicature Act 1964 on “Additional Powers Of The High Court” (“CJA 1964”) which provides as follows:

Transfer of proceedings 12.

Power to **transfer any proceedings to any other Court or to or from any subordinate court**, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof: Provided that this power shall be exercised in such manner as may be prescribed by any rules of court. (emphasis added)

Under the s. 3 definition of CJA 1964, “court” in the context of item 12 of the Schedule means the High Court.

[24] Although Item 12 of the Schedule to CJA 1964 seemed to suggest that the High Court of Malaya has the power to transfer its cases to the High Court of Sabah and Sarawak, and *vice versa* and that therefore it was thought that the common law principle against cross-territory transfer of cases is not applicable to the two High Courts in Malaysia anymore, the Federal Court in *Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor* [2016] 4 CLJ 641; [2016] 3 MLJ 553 held that such suggestion is erroneous. In *Hap Seng Plantations* case, the Federal Court held *inter alia* as follows:

[15] We are of the considered view that the power to transfer any proceeding to any other court as stated in para. 12 of the Schedule of the CJA must be read in light of s. 3 of the CJA where ‘local jurisdiction’ is defined to mean in the case of the High Court in Malaya, the territory comprised in the states of Malaya and in the case of the High Court in Sabah and Sarawak, the territory comprising of the states of Sabah and Sarawak respectively (see the case of *Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd* [1990] 1 MLJ 191). It therefore follows that the power to transfer any proceeding must be confined to transfer within a particular local jurisdiction and not between the two local jurisdictions as it were ...

[16] It is noted that s. 25(1) of the CJA has a saving provision to the effect that it states ‘Without prejudice to the generality of art. 121 of the Constitution ...’. This is similarly reproduced in s. 25(2) of the CJA where

- A it states ‘Without prejudice to the generality of subsection (1) the High Court ...’. We agree with the submission of learned counsel for the defendants that the provision in the CJA with respect to the additional powers as set out in the Schedule to the CJA must not have intended to compromise art. 121 of the Federal Constitution. It is clear that the wording ‘without prejudice’ would denote that the additional powers as
- B set out in the said Schedule, namely para 12 should not be inconsistent with art. 121’s intention for there to be two separate High Courts with their own territorial jurisdiction.

- [18] We are of the view reading s. 3 on the definition of ‘local jurisdiction’ together with ss. 23(1) and 25(1) and (2) of the CJA, it would appear that the Legislature did not have the intention to override or circumvent art. 121 of the Federal Constitution and the specific territorial jurisdiction granted to each High Court. It was not intended that there could be a transfer of proceedings between the two territorial jurisdictions.
- C

- [19] Although O. 57 r. 1(4)(a) of the ROC 2012 speaks of a transfer of proceedings from the High Court to another High Court of ‘co-ordinate jurisdiction’, we take the view that the context must be confined to the respective territorial jurisdiction of the two High Courts, namely that of Malaya on the one hand and Sabah and Sarawak on the other. It is clear that the High Courts within the States of Malaya are each of co-ordinate jurisdiction as are each of the High Courts in the States of Sabah and Sarawak.
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- E

- The High Court’s decision on this point in *Asia Debut Sdn Bhd v. Kementerian Pendidikan Malaysia & Ors* [2014] 1 LNS 1339, [2015] 9 MLJ 770, which was cited by the Malaysian Court Practice 2015 for suggesting that there was such power to transfer case from High Court of Malaysia to High Court of Sabah and Sarawak, has been overruled by the Federal Court in *Hap Seng Plantations* case (*supra*) in 2016.
- F

- [25] Since the statutory powers under Item 12 of the Schedule to CJA 1964 are specifically conferred upon the High Courts but not upon the subordinate courts, the subordinate courts in Malaysia cannot derive their powers of transfer of cases by virtue of CJA 1964 provisions. The subordinate courts have their own separate territorial jurisdictions too (see ss. 59 and 76 of the Subordinate Courts Act 1948), and their powers for cross-territory transfers among them also have to be derived from express statutory provisions to that effect so as to take them outside the common law principle against cross-territory transfers.
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- H

- [26] As explained by the Court of Appeal in *Kerajaan Negeri Kelantan v. Petrolia Nasional* case (*supra*) in para. [13] of the judgment, the relevant parts whereof are reproduced below:

- I

(a) Order 57 r. 1(1) of the RC is not found in the previous Rules of the High Court 1980. Prior to the introduction of O. 57 r. 1(1) of the RC, civil cases have been transferred by relying on s. 20 of the CJA and para. 12 of the Schedule to the CJA (para. 12). ... Previous cases regarding the court's power to transfer cases based on s. 20 of the CJA and/or para. 12 do not apply to the construction of O. 57 r. 1(1) of the RC ...

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(b) in *Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor* [2016] 3 MLJ 553 at para. 19, Zulkefli Makenudin CJ (Malaya) in the Federal Court held, among others, O. 57 r 1(1) of the RC does not allow a transfer of cases between the High Court of Malaya and the High Court in Sabah and Sarawak. The High Court's decision in *Asia Debut* (which allowed the transfer of a case from the KL High Court to the High Court in Kota Kinabalu), cited by the defendants' learned counsel, was not followed in *Hap Seng Plantations (River Estates)*;

B

(c) O. 57 r. 1(1) of the RC provides a discretionary power for the court to transfer cases. This is clear from the use of the permissive term 'may' in O. 57 r. 1(1) of the RC. In exercising the court's discretionary power under O. 57 r. 1(1) of the RC, there are two cumulative conditions to be fulfilled, namely:

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D

(i) the court 'shall take into consideration' the matters enumerated in O. 57 r. 1(4)(A)-(E) of the RC ('the first condition'); and (ii) the court 'is satisfied that any proceedings in that court can be more conveniently or fairly tried in some other court' ('the second condition'); and

E

(d) the exercise of the court's discretion to grant a transfer or otherwise in a particular case, must necessarily depend on the particular affidavit evidence adduced in the case in question. As such, the exercise of judicial discretion in a transfer application under O. 57 r. 1(1) of the RC, is not a binding precedent from the view point of the *stare decisis* doctrine.

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[27] Item 3(2) of the Schedule to the Subordinate Courts Act 1948 on "Additional Powers Of Sessions Courts And Magistrates' Courts", which is reproduced below, is the express statutory provision to that effect:

G

Transfer of proceedings

3(2) Power, on application or of its own motion, to transfer any proceedings to another court of co-ordinate jurisdiction.

By virtue of item 3(2) of the Third Schedule to the Subordinate Courts Act 1948 ("SCA 1948") which also became law in Sabah and Sarawak as from 1 June 1981, a subordinate court in West Malaysia has the power to transfer its cases to another court of coordinate jurisdiction in West Malaysia, and *vice versa ie*, cross-territory transfer in the limited sense of crossing over the particular Sessions Court's territory but not crossing over from Malaya to Sabah and Sarawak, or *vice versa*. The common law principle against cross-territory transfer of cases is therefore not applicable to the subordinate courts in Malaya insofar as it relates to transfer within Malaya.

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- A [28] Cross-territory transfer of case to another court of coordinate jurisdiction is different from cross-hierarchy transfer of case which passes the case to another court of a different hierarchy. Item 12 of the Schedule to the CJA 1964, by virtue of the statutory words “transfer any proceedings ... to or from any subordinate court “ also confers powers of cross-hierarchy transfers upon the High Courts but SCA 1948 do not have any express statutory provisions on cross-hierarchy transfer of case.
- B

- [29] That brings us to the Rules of Court 2012 (“ROC 2012”) which constitute other written law conferring other powers upon the High Court within the meaning of s. 25(1) of the CJA 1964 and upon the subordinate courts within the meaning of Item 27 of Third Schedule to the SCA 1948.
- C

[30] Order 57 r.1(1) of the ROC 2012 provides as follows:

Transfer of proceedings to another Court (O. 57 r. 1)

- D (1) Where the Judge of the High Court or a Judge of the Sessions Court or a Magistrate is satisfied that any proceedings in that Court can be more conveniently or fairly tried in **some other Court** of coordinate jurisdiction, he may on application by any party, order the proceedings to be transferred to the other Court. (emphasis added)

- E [31] In connection with the meaning of the word “court” which appears in a statute, one must always bear in mind that the word “court” in the CJA 1964, SCA 1948 and ROC 2012 have different definitions and meanings. In the CJA 1964, the word “court” is defined as “the Federal Court, the Court of Appeal or the High Court, as the case may require” because the CJA 1964 deals with jurisdiction and powers of the Superior Courts. In the SCA 1948, the word “Court” with capital “C” does not appear in the definition, and the word “court” with a small “c” in the substantive section refers to the relevant court in the context of that section. In the ROC 2012, O. 1 r. 4(2) defines the word “Court” as follows:
- F

- G (2) In these Rules, unless the context otherwise requires, “**Court**” refers to the Magistrate’s Court, or any one or more Magistrates thereof, the Sessions Court, or any one or more Judges thereof, **the High Court or any one or more Judges or Judicial Commissioners thereof, whether sitting in Court or in Chambers**; but the foregoing provision shall not be taken as affecting any provision of these Rules and, in particular, Order 32, rule 9, by virtue of which the authority and jurisdiction of the Registrar of the Court is defined and regulated. (emphasis added)
- H

- I Order 57 must be read in the light of the Federal Court’s decision in *Hap Seng Plantations* case which held that, by virtue of interpretation of the CJA 1964 together with the Federal Constitution, neither the High Court of Malaya nor the High Court of Sabah and Sarawak has the power to order a cross-territory transfer of case to or from each other. Likewise, no subordinate court has the power to transfer a case from West Malaysia to East Malaysia, and *vice versa*.

[32] The provisions of O. 57 r. 1(1) to r. (3) of the ROC 2012 are as follows: A

Transfer of proceedings to another Court (O. 57, r. 1)

1. (1) Where the Judge of the High Court or a Judge of the Sessions Court or a Magistrate is satisfied that any proceedings in that Court can be more conveniently or fairly tried in some other Court of coordinate jurisdiction, he may on application by any party, order the proceedings to be transferred to the other Court. B

(2) A transfer of any proceedings from:

(a) a subordinate court to the High Court; or C

(b) the High Court to a subordinate court,

shall only be made by an order of that High Court Judge on application by any party by originating summons or notice of application, whichever is appropriate.

(3) A transfer of any proceedings from: D

(a) a Magistrates' Court to a Sessions Court; or

(b) a Sessions Court to a Magistrates' Court,

shall only be made by an order of that Sessions Court Judge on application by any party by originating summons or notice of application, whichever is appropriate. E

[33] Order 57 r. 1(1) of the ROC 2012 has, among others, given additional statutory powers of ordering a judge-to-judge transfer of cases in the High Courts over and above the cross-hierarchy transfer. F

[34] In conclusion, a detailed examination and analysis of the relevant statutory provisions shows that a judge of the High Court of Malaya has case transfer powers of the following types and extent: G

(i) judge-to-judge transfer of case from a judge in the High Court of Malaya to another judge in the High Court of Malaya but not cross-territory transfer to another Judge of the High Court in Sabah and Sarawak (see: Item 12 of the Schedule to the CJA 1964 and O. 57 r. 1(2) of the ROC 2012 read with Federal Court's decision in *Hap Seng Plantations* case (*supra*); and

(ii) cross-hierarchy transfer of case from the High Court to a subordinate court or from a subordinate court to the High Court (see O. 57 r. 1(2) of the ROC 2012). H

[35] There is no statutory provision to limit the judge-to-judge transfer of cases to only situations of branch-to-branch transfer, or division-to-division transfer, or locality-to-locality transfer. The statutory provisions in O. 57 r. 1(2) provides for judge-to-judge transfer in the High Court, and one cannot I

- A add word thereto to limit its scope, nor to introduce extraneous criterion of branch-to-branch transfer or division-to-division transfer or locality-to-locality transfer. This is particularly the legal position as the word “branch”, “locality” or “division” does not appear anywhere in the CJA 1964 or the ROC 2012. In other words, the sum total of case transfer powers of a Judge
- B of the High Court is that a Judge of the High Court has the statutory power to transfer a case before him/her to another Judge of the High Court within the territorial jurisdiction of the High Court, irrespective of whether the other judge of the High Court is located at the same or different branch, division or locality as long as the other branch, division or locality where the transferee-judge sits is within the same territorial jurisdiction as that of the transferor-judge.
- C

- [36] By reason of the above, this court respectfully disagrees with the High Court’s decision in *Koh Heng Jin Holdings Sdn Bhd & Anor v. Lee Quan Yoong & Anor*. It is the decision of this court that a Judge of the High Court of
- D Malaya has the statutory power to transfer a case before him/her to another judge of the High Court of Malaya, irrespective of whether the other Judge of the High Court of Malaya is located at the same or different branch, division or locality as long as the other branch, division or locality where the transferee-judge sits is within Malaya (*ie*, West Malaysia). This court agrees with the observation of the learned judge in para. [32] of the judgment
- E in *MTD Captial Bhd v. Tan Sri Dr Azmil Khalili Dato’ Khalid* [2020] 2 CLJ 677; [2020] 8 MLJ 252 that the High Court has power to make such an order to transfer proceedings to another court that is located within the very same branch, though this court’s reasons are different. This court’s reasons are by virtue of the interpretation of the statutory provisions, and are not related to
- F the question of whether the results are congruous or incongruous.

- [37] In the premises, it is well within the power of this Shah Alam High Court NCVC 10 to transfer the NCVC 10 case to Shah Alam High Court NCVC 3.

- G [38] The result of this court’s interpretation of the relevant statutory provisions is consistent with the principles of statutory principles that statutory words are to be given their natural and ordinary meanings in the context of the statute, the various statutory provisions are to be harmoniously interpreted so as to avoid rendering some of the statutory words redundant
- H or otiose or mere surplusage, and the purposive approach to interpretation of statute s. 17A of the Interpretation Acts 1948 and 1967. This result is also consistent with the long practice of the High Courts.

- [39] About two decades ago when the case management of civil cases was initiated as a pilot programme during the time of Justice James Foong J (later FCJ) in the Kuala Lumpur High Court, transfers of civil cases from one judge
- I to another judge within the same division or from one division to another

division of the Kuala Lumpur High Court pursuant to the re-allocation of civil cases as part of the centralised case management was an almost daily occurrence. Even when the case management of civil cases has been de-centralised and placed under each judge, transfers of cases resulting from re-allocation or exchange of civil cases among the High Court Judge have frequently been carried out and without formal orders in various situations including (a) when a judge has been recused from hearing a particular civil case, that particular case is passed and transferred to another judge in the same division and in exchange a civil case of same type (*ie*, under the same code of categorisation of cases) is passed and transferred to the recused judge; (b) when a judge has made an order of transfer of a civil case to another judge in the same division of the High Court at the same locality, in exchange a civil case of same type (*ie*, under the same code of categorisation of cases) is passed and transferred to the transferor-judge without any necessity of a formal transfer order; (b) when additional judges are appointed for a division of the High Court in a particular location, some of the existing civil cases are also re-allocated and transferred to the judges appointed in the new posts; etc. These re-allocations and transfers of civil cases are part and parcel of the administration of justice in civil cases towards the overall objective of just, expeditious and economical disposal of civil cases. In the premises, there is no jurisprudential or practical reason for reading into O. 57 r. 1(1) an extraneous requirement, which is not stated in the statutory provision, that the High Court Judge's power of transfer of case to another High Court Judge is limited to cross-branch transfer, cross-division transfer or cross-locality transfer.

Second Issue: Whether An Order Of Consolidation Must Be Made First Before There Can Be A Transfer Of Case From One Judge To Another Judge

[40] Citing the High Court's decision in *Koh Heng Jin Holdings Sdn Bhd & Anor v. Lee Quan Yoong & Anor*, the defendant also argued that there is still no order of consolidation and hence it is allegedly premature to consider an application for transfer of case from NCVC 10 court to NCVC 3 court.

[41] One of the characteristics of coordinate jurisdiction is that a judge cannot order or direct another judge with coordinate jurisdiction what to do or how to conduct a case which is before the other judge. A judge's order of consolidation of one case before him/her with another case before another judge of coordinate jurisdiction is tantamount to the first-mentioned judge ordering or directing the second-mentioned judge on the manner of conducting the trial of a case before the second-mentioned judge. This would offend the concept of coordinate jurisdiction. In law and in practice, the courts do not and should not make such order of consolidation which is tantamount to directing or ordering another judge of coordinate jurisdiction as to the manner of conducting the trial of case before the other judge.

- A [42] Although a judge may, pursuant to the express statutory provision on transfer of case, order the transfer of a case to another judge of coordinate jurisdiction, the transferor-judge cannot order a consolidation of the cases which include a case pending before the transferee-judge of coordinate jurisdiction. Whether or not the transferred case should be consolidated, heard together or heard separately must be left to the transferee-judge to consider and decide.

[43] In the premises, this court rejects the argument that an order of consolidation must be made first before there can be a transfer of case from one judge to another judge.

- C *Third Issue: Whether In The Circumstances This Is A Proper Case For Transfer Of This NCVC 10 Case To NCVC 3 Court*

[44] The relevant provisions in the ROC 2012 on transfer of case are as follows:

- D O. 57 r. 1(1) Where the Judge of the High Court or a Judge of the Sessions Court or a Magistrate is satisfied that any proceedings in that Court **can be more conveniently or fairly tried in some other Court** of co-ordinate jurisdiction, he may on application by any party, order the proceedings to be transferred to the other Court.
- E O. 57 r. 1(4) Before making any order to transfer any proceedings from:
- (a) the High Court to another High Court of co-ordinate jurisdiction;
 - (b) a subordinate court to the High Court;
 - (c) the High Court to a subordinate court; or
 - (d) a subordinate court to another subordinate court,
- F the High Court Judge or the Judge of the Sessions Court or Magistrate, as the case may be, shall take into consideration whether the High Court or subordinate court which shall hear the case is located at or nearest to the place where:
- G (A) the cause of action arose;
- (B) the defendant, or one of the several defendants, resides or has his place of business;
- (C) the facts on which the proceedings are based exist or are alleged to have occurred;
- H (D) the land the ownership of which is disputed is situated; or
- (E) for other reasons it is desirable in the interests of justice that the proceedings should be transferred.

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[45] As NCVC 3 court and this NCVC 10 are both situated in Shah Alam, factors (A) to (D) of O. 57 r. 1(4) are irrelevant for consideration here. This court in our present case has to consider factor (E) in O. 57 r. 1(4) (*ie*, whether it is in the interest of justice to order a transfer) in order to decide whether the present case “can be more conveniently or fairly tried in some other court” within the meaning of O. 57 r. 1(1).

A

B

[46] Order 57 r. 1(1) lays down the disjunctive criterion of convenience in trial and criterion of fairness in trial to be satisfied in order for an order of transfer of case to be issued. The role of the court is to weigh between court A and court B to assess at which court the case can be more conveniently or fairly tried.

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[47] Of the two disjunctive criteria, fairness in trial carries much more weight than convenience in trial, and where the two disjunctive criteria clash against each other, fairness prevails over convenience. A simple illustration will serve to verify this point. Suppose there is a case where both court A and court B have jurisdiction over the dispute and the defendant-applicant proves that all the four factors (A) to (D) of O. 57 r. 1(4) favour his case so as to render it predominantly more convenient to try the case in court B but the plaintiff proves that his key witness is a very elderly person of poor health who is unlikely to survive for many months so much so that he would not be alive to testify by the time the case comes up for trial in court B after the transfer, as contrasted with court A which is able to start the full trial very shortly, then the fairness in trial overrides and prevails over the convenience in the case and the transfer of case should not be ordered by court A.

D

E

[48] In this context, it is also relevant to consider whether or not it is fair or desirable for the case in question to be tried and heard by the same judge.

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[49] In *Jaya Sudhir* case (*supra*), the Court of Appeal in para. [13] of its reported judgment held “in conclusion, we have to reiterate that it would be unjust to both parties to allow their respective claims to go before two different judges whose decisions may conflict with each other, and this probable outcome must be avoided at all cost.” This statement, though made in the context of an application for consolidation, should apply equally to an application for transfer. Both types of applications have the same consequence of putting two cases before the same judge for trial and decision. It is legally untenable to countenance an argument that allowing two interrelated cases for trial and decisions before two different judges whose decisions may conflict with each other would be unjust in the context of a consolidation application but would be just in the context of a transfer application.

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[50] In considering factor (E) of O. 57 r. 1(4), *ie*, whether or not it would be desirable in the interest of justice to have the action transferred to NCVC 3, it is also relevant to assess whether a transfer would not secure the just,

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- A expeditious and economical disposal of the action, as was rightly considered by Su Tiang Ju JC in *Liziz Plantation v. Liew Ah Yong* [2020] 10 CLJ 94; [2021] 10 MLJ 360. In *Liziz Plantation v. Liew Ah Yong*, the learned JC refused to transfer an originating summons, which involved the main question on removal of caveat, from the High Court at Ipoh to the High Court at Kota Bahru because the High Court in Ipoh was ready to hear and decide on the case and any transfer would entail much delay and would contradict the objective of just, expeditious and economical disposal of the cases.
- B

- [51] The setting up of specialist court to try and decide on specific categories of cases is an important circumstance to be considered in assessing whether or not an application for transfer of such categories of cases to another court should be allowed. In *R Ramani M Ramalingam & Ors v. Deluxe Exclusive Lounge Sdn Bhd & Another Case* [2018] 5 CLJ 236; [2017] 8 MLJ 302, Wong Kian Keong JC (now JCA) has rightly declined to transfer a case filed in the Intellectual Property High Court in Kuala Lumpur (the IP Court) to Johor Bahru High Court. In that case, notwithstanding that the cause of action arose in Johor Bahru (“JB”); the defendants had their place of business in JB; and the facts on which the two suits were based occurred in JB were three facts which were relevant under O. 57 r. 1(4)(A)-(C) of the ROC 2012, the court declined to exercise its discretion under O. 57 r. 1(1) of the ROC 2012 to transfer the two suits to Johor Bahru Court for the following reasons: (a) there was no affidavit evidence to show why the two suits could not be ‘fairly tried’ in the IP Court; (b) the two suits could be ‘more conveniently’ tried in the IP Court which specialises solely in intellectual property (‘IP’) matters; (c) the purposes for establishing the IP Court were to promote, if not ensure, the uniformity, consistency and predictability in the development of IP jurisprudence and case law by the IP Court; and to promote IP specialisation of the judge or judicial commissioner sitting in the IP Court; and (d) the very objective of establishing the IP Court would be defeated by allowing the transfer of the two suits to JB Court (see para. 14 of the reported judgment).
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- D
- E
- F

- G [52] The cases of *Jaya Sudhir* case (*supra*), *R Ramani M Ramalingam* case and *Liziz Plantation* case are but three of the non-exhaustive examples of application of limb (E) of O. 47 r. 1(4) of the ROC 2012 (“for other reasons it is desirable in the interests of justice that the proceedings should be transferred”) and in the opening part of O. 47 r. 1(4) of assessing at which court the case can be “more ... fairly tried”.
- H

- I [53] There may well be other factual scenarios which fall within the ambit of limb (E) of O. 47 r. 1(4) of the ROC 2012 (“for other reasons it is desirable in the interests of justice that the proceedings should be transferred”) or the scope of the opening part of O. 47 r. 1(4) of assessing at which court the case can be “more ... fairly tried”.

Pleadings In The Four Suits**A**

[54] There are four civil suits filed in the Shah Alam High Court, namely:

- (i) Civil Suit No. BA-22NCC-98-07/2022 (“NCVC 10 Suit 98”) registered in court NCVC 10;
- (ii) Civil Suit No. BA-22NCC-114-08/2022 (“NCVC 12 Suit 114”) in registered court NCVC 12;
- (iii) Civil Suit No. BA-24NCC-109-10/2022 (“NCVC 3 Suit 109”) registered in court NCVC 3; and
- (iv) Civil Suit No. BA-22NCC-131-10/2022 (“NCVC 3 Suit 131”) registered in court NCVC 3.

B**C**

[55] The parties in each of the four suits are as tabulated below:

Suit	Plaintiff(s)	Defendant(s)
This NCVC 10 Suit No. 98	(i) Sivasubramaniam Sivayogarajasingam (father) (ii) Yasimin bin Yusoff Bhd (father’s nominee)	(i) Saumian Sivayogarajasingam (son) (ii) Avis Holdings Sdn Bhd (iii) Plus One Management Services Sdn Bhd (Company Secretary)
NCVC 3 Suit 131	Sivasubramaniam Sivayogarajasingam	Austin Holdings Sdn Bhd (jointly owned by father and mother)
NCVC 3 Suit 109	Larico Infrastructure Sdn Bhd (wholly-owned subsidiary of Avis Holdings Sdn Bhd), solicitor instructed by the son	(i) Sivasubramaniam Sivayogarajasingam (father) (ii) Yasimin bin Yusoff (father’s nominee) (iii) Yew Guan Chin (Company Secretary)
NCVC 12 Suit No. 114	Sivasubramaniam Sivayogarajasingam (father)	(i) Saumian Sivayogarajasingam (son) (ii) Avis Holdings Sdn Bhd; Larico Infrastructure Sdn Bhd (wholly-owned subsidiary of Avis Holdings Sdn Bhd)

D**E****F****G****H****I**

- A [56] In this NCV 10 Suit No. 98, the plaintiffs in their statement of claim pleaded *inter alia* that:
- (i) the first plaintiff, Sivasubramaniam (father) and the first defendant, Saumian (son) incorporated D2 Avis Holdings Sdn Bhd (“Avis Holdings”) on 3 December 2015 and brought in the second plaintiff, Yasimin and one Nadarajah a/l Sivapragasam (“Nadarajah”) as shareholders in the company: para. 6 of the statement of claim;
 - (ii) each of the first and second plaintiffs held 2,500 shares in Avis Holdings, while each of the first defendant and Nadarajah held 2,500 shares in Avis: para. 7 of the statement of claim;
 - (iii) the second plaintiff held the 2,500 shares in Avis Holdings as the nominee of the first plaintiff, while Nadarajah held the 2,500 shares in Avis Holdings as the nominee for the first defendant: para. 8 of the statement of claim;
 - (iv) in year 2020, the first plaintiff suffered serious illness and was hospitalised under intensive care and the first defendant asked the first plaintiff to sign in blank a share transfer form: para. 9 of the statement of claim;
 - (v) as the first plaintiff was seriously ill, he signed the share transfer form of his 2,500 shares in blank: para. 10 of the statement of claim;
 - (vi) following that, the second plaintiff also sign share transfer form in blank for her 2,500 shares in Avis Holdings: para. 11 of the statement of claim;
 - (vii) both the share transfer forms had only the signatures of each plaintiff’s respective name, and was not dated or witnessed: para. 12 of the statement of claim;
 - (viii) on 26 May 2021, the first plaintiff asked for his dividend of RM5,000,000 in Avis Holdings for his personal use: para. 13 of the statement of claim;
 - (ix) the first defendant forced the first plaintiff to sign an agreement for transfer of 5,000 shares in Avis Holdings, with 3,500 shares to Manimekalai Sivayogarajasingam and 1,500 shares to Sauntharya Vaihunthan: para. 14 of the statement of claim;
 - (x) the first defendant agreed to pay RM2,000,000 from his personal account but only paid RM1,000,000: para. 15 of the statement of claim;
 - (xi) the agreement dated 26 May 2021 was entered into under undue influence and the first plaintiff was compelled to sign it in order to get the dividend money for his personal use: para. 16 of the statement of claim;

- (xii) the value of shares in Avis Holdings is much more than the amount agreed by the first defendant, as Avis is the holding company with many subsidiaries with much incomes: para. 17 of the statement of claim; A
 - (xiii) the first defendant intends to use the agreement and blank transfer form to take over the control and administration of Avis Holdings: para. 18 of the statement of claim; B
 - (xiv) Avis Holdings owes several subcontractors monies and refuses to pay them: para. 19 of the statement of claim;
 - (xv) with the control and administration taken over by the first defendant, the first plaintiff cannot make payments to contractors and all ongoing projects of Avis Holdings cannot be completed and bank guarantee was pulled and it will cause financial problems to Avis: para. 20 of the statement of claim; C
 - (xvi) with the control and administration taken over by the first defendant, payment of dividend will not be made: para. 21 of the statement of claim; D
 - (xvii) the plaintiffs claim for (i) the agreement dated 26 May 2021 be invalidated and avoided; (ii) the blank transfer forms be nullified; (iii) if the transfers of shares have been made, an order that the third defendant cancel the said transfers and restore the status of the plaintiffs in Avis Holdings; (iv) costs and other reliefs. E
- [57] In this NCVC 10 Suit No. 98, the defendants in their defence pleaded *inter alia* that: F
- (i) before D2 Avis Holdings Sdn Bhd was incorporated, D1 had incorporated Larico Infrastructure Sdn Bhd (“Larico”) on 2 July 2007 with intention to carry out contracts or subcontracts in energy industry: para 8.1 of the defence;
 - (ii) D1 had incorporated Larico with intention that: (i) beneficial ownership of 50% shares in Larico was for the direct benefit of D1; (ii) beneficial ownership of balance 50% shares in Larico was for the benefit of D1’s mother and sisters; (iii) due to the fact that D1’s younger sister had minor intellectual incapacity, it was decided that her interest in Larico would be controlled by D1 and/or D1’s elder sister for her subsequent financial benefit: para. 8.2 of the defence; G H
 - (iii) meanwhile, the first plaintiff had already been involved in a separate business known as Trenergy Infrastructure Sdn Bhd (“Trenergy”) and at that time, the first plaintiff, Sivasubramaniam, was not involved in the business of Larico and did not hold any share in Larico: para. 8.3 of the defence; I

- A (iv) on or about 3 August 2012, Trenergy was acquired by Sarawak Cable Berhad and after the acquisition the first plaintiff resigned as Executive Director of Trenergy on 25 September 2013 and was encouraged by D1 to join Larico as a director: para 8.4 of the defence;
- B (v) the first plaintiff accepted the invitation and was appointed as a director of Larico on 11 October 2013 but he did not hold shares in Larico: para. 8.5 of the defence;
- (vi) after that, for the purpose of restructuring Larico Group of Companies in 2015, D1 caused to be incorporated D2 Avis: para 8.6 of the defence;
- C (vii) D1 used the same ethos as in Larico in terms of shareholding in Avis, namely (i) beneficial ownership of 50% shares in Larico was eventually to be for the benefit of D1's mother and sisters; and (ii) beneficial ownership of 50% shares in Larico was for the benefit of D1: para 8.7 of the defence;
- D (viii) D1 brought in the first plaintiff (D1's father), the second plaintiff (Yasimin) and Nadarajah a/l Sivapragasam as shareholders whereby 25% shares were registered under D1's name, 25% shares in Nadarajah's name who held as trustee for D1; (iii) 25% shares in Avis Holdings registered in the first plaintiff's name; and 25% shares in Yasimin's name who held as trustee for the first plaintiff: see: para. 8.8 of the defence;
- E (ix) at all material times, the first plaintiff recognised and understood that 50% shares he held in Avis Holdings would eventually for the benefit of D1's mother and sisters, and shall be transferred in future: para. 8.9 of the defence;
- F (x) restructuring of Larico Group of Companies was carried out around or after mid-2016 whereby Avis Holdings acquired Larico and all its subsidiaries. Avis has acquired all the share equities in Larico on 1 June 2016: para. 8.10 of the defence;
- G (xi) denying that there was any blank share transform signed in 2020 or that the first defendant had forced the first plaintiff to sign the share transfer form, the defendants alleged that the agreement on transfer of shares was made on 28 May 2021: paras. 9.1 and 11 of the defence;
- H (xii) the defendants alleged that the first plaintiff had been reckless in his personal financial management (para. 12.1 of the defence);
- (xiii) in early 2021, the first plaintiff told the first defendant that (i) the first plaintiff intended to retire and give more attention to personal travelling and well-being, (ii) the first plaintiff needed sufficient funds
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- for his retirement and his nursing and continual medical expenses, (iii) he wanted to be interdependent and did not want his family to manage his finance (para. 12.2 of the defence); A
- (xiv) due to the abovementioned matter, the first plaintiff requested from the first defendant an one-off payment of RM2,000,000 for his retirement use, and such request was agreed by the first defendant (para. 12.3 of the defence); B
- (xv) in view of the first plaintiff's plan to retire, the first defendant asked the first plaintiff to transfer 50% shares which he held in Avis Holdings to the first defendant's mother and elder sister (para. 12.4 of the defence); C
- (xvi) in view of his intention to retire and as recognition that he held 50% shares in Avis Holdings for the benefit of the first defendant's mother and sisters, the first plaintiff agreed to transfer the 50% shares in Avis Holdings in the following proportions: (i) 2,000 shares to be held in trust by the first defendant or the first defendant's elder sister for the benefit of the younger sister; (ii) 1,500 shares are for the benefit of the first defendant (para. 12.7 of the defence); D
- (xvii) following that, the first defendant prepared the draft agreement dated 14 April 2021 for the first plaintiff's perusal (para 12.6 of the defence); E
- (xviii) subsequently, the first plaintiff and the first defendant signed the agreement dated 26 May 2021 which was witnessed by the first plaintiff's wife, mother of the first defendant, whereby the beneficial ownership of 3,500 shares in Avis Holdings were transferred to the first defendant's mother and 1,500 shares in Avis were transferred to the first defendant's elder sister and the first defendant agreed to pay RM2,000,000 to the first plaintiff in two stages (paras 12.7 and 12.8 of the defence); F
- (xix) the first plaintiff willingly and voluntarily signed the agreement because he recognised that he held 50% shares in Avis Holdings for the benefit of the first defendant's mother and sisters, and thereafter the first defendant arranged to implement the share transfers (paras. 12.9 and 12.10 of the defence); G
- (xx) on or about 28 May 2021, the third defendant as the company secretary of Avis Holdings prepared the lodgement of directors and forms under the Companies Act 2016 for transfer of 2,500 shares from the first plaintiff to the first defendant's mother, 1,000 shares from the second plaintiff, Yasimin, to the first defendant's mother, and 1,500 shares from the second plaintiff, Yasimin, to the first defendant's elder sister (paras. 12.11 and 12.12 of the defence); H
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- A (xxi) due to second plaintiff Yasimin's mistake in signing the forms at the witness columns, the first defendant on or about 28 June 2022 requested the second plaintiff, Yasimin, to sign again the forms at the correct parts, and then on or about 18 July 2022 Avis Holdings passed the signed forms to the third defendant company secretary for registration (paras. 12.14 and 12.15 of the defence);
- B (xxii) however, on or about 28 July 2022 and to the surprise of the first defendant, the plaintiffs' solicitors informed the first defendant that they have obtained *ad interim* injunction to restrain the transfer of shares pending the disposal of the court suit: para. 13 of the defence;
- C (xxiii) Avis Holdings did not enter into any contract with contractors or subcontractors, contracts with contractors and subcontractors were entered into by Avis Holdings' subsidiary companies, Avis Holdings has not obligation to pay the contractors or subcontractors for the contracts entered into by its subsidiaries, bank guarantees were given to customers of subsidiary companies and not by Avis Holdings, and the first defendant himself has given substantial guarantees for the bank facilities taken by Avis Holdings' subsidiary companies: para. 20.1 to 20.5 of the defence; and
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- E (xxiv) the agreement dated 26 May 2021 is a valid and binding agreement and the transfers to the first defendant's mother and elder sister ought to be registered: para. 22 of the defence.

- [58] In NCVC 3 Suit No. 109, Larico Infrastructure Sdn Bhd ("Larico"), a wholly-owned subsidiary of Avis Holdings, sued Sivasubramaniam, Yasimin and Yew Guan Chin for (i) declaration that Nadarajah's resignation as the Director of Larico was null and void; (ii) declaration that the circular resolution dated 22 September 2022 purporting to accept Nadarajah's resignation as the Director of Larico is null and void; (iii) an order to compel Yew Guan Chin to do all things to reinstate Nadarajah as the Director of Larico; (iv) damages and other reliefs: see exh. "SS1" to Sivasubramaniam's affidavit-in-reply (encl. 64). The affidavit-in-support of NCVC 3 Suit No. 109 was affirmed by Saumian on behalf of Larico. It is Saumian's position that Nadarajah had not resigned (see paras. 7 to 19 of Saumian's affidavit-in-support). Saumian also questioned the validity of Larico resolution signed by Sivasubramaniam and Yasimin to reinstate the contract with Tenaga Nasional Bhd, changes of bank account signatories, etc: paras. 20 and 21. In Saumian's said affidavit, reference is also made to SVB Resources Sdn Bhd, a company held by Sivasubramaniam and Yasimin and appointment of Ir Dr Akam: para. 22(1) to 22(3). Saumian asserted that Avis Holdings, as the sole shareholder of Avis Infrastructure, on 17 October 2022 resolved to remove Sivasubramaniam and Yasimin as the Directors of Larico, but they
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continue to hold themselves out as the Directors of Avis Infrastructure and refused to recognise Avis Holdings' resolution on removal: paras. 24 to 29. It is also alleged by Saumian that after improper removal of Nadarajah, Sivasubramaniam and Yasimin passed unlawful resolutions and used Larico for improper purposes: paras. 30 to 37.

[59] In NCVC 3 Suit No. 131, Sivasubramaniam (father) sues Austin Holdings Sdn Bhd ("Austin"), a company owned by Sivasubramaniam and Manimekalai (Saumian's mother). According to Sivasubramaniam, Ultimo Capital Limited lent a total of approximately RM12.6 million to Austin, with the understanding that the loan would be released half to Sivasubramaniam and half to Manimekalai, each receiving RM6,307,694.44 (see paras. 3 to 6 of exh. "SS5" to Sivasubramaniam's affidavit-in-reply (encl. 64). It is also alleged that despite the demand for repayment of the loan money to Austin, Manimekalai in breach of agreement refused to return it (paras. 7 to 10). Austin hence sues Manimekalai for RM6,307,694.44.

[60] In NCVC 12 Suit No. 114, Sivasubramaniam sues Saumian, Avis Holdings and Larico. According to Sivasubramaniam, Larico had retained profits of RM69,653,324 for financial year 2021 (para. 9 of the statement of claim in exh. "SS4" in encl. 64), on 17 June 2022, the Board of Directors of Larico declared an interim dividend of RM20,000,000, and the company secretary had issued tax vouchers for the interim dividend of RM20,000,000 (paras. 9 to 11). Sivasubramaniam alleged that the finance and cheques of Avis Holdings and Larico are controlled by Saumian who refused to sign the resolution of Avis Holdings to declare RM10 million dividend for Sivasubramaniam and also refused to cause Larico the dividends from Avis Holdings (para. 12 to 14). Despite solicitor's demand dated 15 August 2022 but the defendants refused to accede to the demand. Sivasubramaniam sues Saumian, Avis Holdings and Larico for his dividends in the amount of RM10,000,000: paras. 15-16.

Analysis And Conclusion

[61] From the pleadings and affidavits filed and/or exhibited here, it appears that the son Saumian has taken *de facto* control and management of Avis Holdings (the parent company), while the father Sivasubramaniam has taken *de facto* control and management of Larico (a wholly-owned subsidiary of Avis Holdings). Both the father, Sivasubramaniam and the son, Saumian have disputed each other's rights to control and manage the respective companies. In NCVC 10 Suit No 98, the disputes relate to the shareholdings, directorships, control and management of Avis Holdings. In NCVC 3 Suit No. 109, the disputes relate to the directorships, control and management of Larico, a wholly-owned subsidiary of Avis Holdings. In NCVC 3 Suit No.

- A 131, the disputes relate to the guarantee/payment obligations of the father Sivasubramaniam and the mother Manimekalai (Saumian's mother) for the loan granted by a third-party company to Austin, a company jointly owned by the father and the mother. In NCVC 12 Suit No. 114, the disputes relate to dividends in Larico, a wholly-owned subsidiary of Avis Holdings. In the pleadings including the defence in NCVC 10 Suit No. 98, there are averments regarding the father Subramaniam's past roles and contributions in Trenergy Energy Sdn Bhd. The father Sivasubramaniam has argued that for his past services and contributions in Trenergy Energy Sdn Bhd, he was rewarded tenths of millions of ringgits shortly prior to his retirement and that these funds have been used for the establishment and development of the related/family companies' businesses.
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[62] In the circumstances, it can be analysed and concluded that:

- (i) there are four inter-related civil suits filed in the Shah Alam High Court;
- D (ii) these four civil suits relate to what the plaintiffs argued as family companies; and
- (iii) these four suits have some common parties and/or some common questions and issues and/or inter-related reliefs.

- E [63] In *Jaya Sudhir* case (*supra*), the Court of Appeal held that "it would be unjust to both parties to allow their respective claims to go before two different judges whose decisions may conflict with each other, and this probable outcome must be avoided at all costs".

- F [64] In order to avoid conflicting findings of facts and/or conflicting decisions in the four suits, it is convenient and just that these four inter-related civil suits be heard and decided by the same High Court Judge.

[65] On the question of at which court the interrelated cases can be more conveniently tried, this court finds that they can be more conveniently tried in NCVC 3 court because:

- G (i) of the four civil suits, two suits are pending before NCVC 3, while one each is pending before this NCVC 10 court and the NCVC 12 court; and
- (ii) this court does not expect any delay to the trial of the interrelated cases after the transfer of this NCVC 10 Suit No. 98 to the NCVC 3 court as this court does not have available full trial dates for this case until the middle of year 2024.
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[66] In the circumstances, it is just and convenient that this Suit No. BA- 22NCC-98-07-2022 be transferred to NCVC 3, which has two of the four inter-related civil suits, to be heard and decided by the same judge.

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[67] In pursuance of the concept of coordinate jurisdiction, the question whether or not the four suits should be consolidated or should be tried together or one after another is left to be dealt with by the judge in the NCVC 3 court.

[68] Costs of the application for transfer will be costs in the cause.

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